



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 12, 2010

Ms. Sara Shiplet Waitt
Senior Associate Commissioner
Legal and Regulatory Affairs, MC 110-1A
Texas Department of Insurance
P.O. Box 149104
Austin, Texas 78714-9104

OR2010-06821

Dear Ms. Waitt:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 379239 (TDI Request Nos. 101366 and 101834).

The Texas Department of Insurance (the "department") received two requests for information related to work-related accidents at a specific company. You claim that the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses section 402.083 of the Labor Code, which provides, "[i]nformation in or derived from a claim file regarding an employee is confidential and may not be disclosed by the [Division of Workers' Compensation of the Texas Department of Insurance] except as provided by this subtitle." *See* Labor Code § 402.083. This office has interpreted section 402.083 to protect only that "information in or derived from a claim file that explicitly or implicitly discloses the identities of employees who file workers' compensation claims." Open Records Decision No. 619 at 6 (1993). Prior decisions of this office have found that information revealing the date of injury, as well as an injured employee's name, beneficiary name, commission claim number, social security number, home telephone number, home address, and date of birth implicitly or explicitly

identifies claimants and is therefore excepted from disclosure under section 552.101 in conjunction with section 402.083 of the Labor Code.¹ Only in those cases where release of the employer's identity would reveal the claimant's identity may the identity of an employer be withheld. You state some of the submitted information derived from claim files implicitly or explicitly discloses the identity of employees who have filed workers' compensation claims. Further, you state the requestor is not one of the persons or entities to which the department is permitted to release claim file information. Based on your representation and our review, the information we have marked implicitly or explicitly identifies workers' compensation claimants. Therefore, the information we have marked is confidential under section 402.083 of the Labor Code and must be withheld pursuant to section 552.101 of the Government Code. However, you have failed to show the remaining information you have marked either implicitly or explicitly identifies an employee who has filed a workers' compensation claim. Therefore, the remaining information you have marked is not confidential under section 402.083 of the Labor Code and may not be withheld under section 552.101 of the Government Code.

We note the remaining information contains insurance policy numbers. Section 552.136(b) of the Government Code states that "[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." Gov't Code § 552.136(b).² This office has determined that insurance policy numbers are access device numbers for purposes of section 552.136. *See id.* § 552.136(a) (defining "access device"). Therefore, the department must withhold the insurance policy numbers we have marked pursuant to section 552.136 of the Government Code.³

In summary, the department must withhold the information we have marked under section 552.101 in conjunction with section 402.083 of the Labor Code. The department must also withhold the information we have marked under section 552.136. The remaining information must be released.

You also ask this office to grant you a previous determination allowing you to withhold information under section 552.101 of the Government Code in conjunction with section

¹ The "commission" refers to the predecessor agency of the Texas Department of Insurance, Division of Workers' Compensation, which was established under House Bill 7, 79th Legislature, R.S. (2005).

² The Office of the Attorney General will raise a mandatory exception, such as section 552.136, on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

³ We note that this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including insurance policy numbers under section 552.136, without the necessity of requesting an attorney general decision.

402.083 of the Labor Code without requesting a ruling from this office. We decline to issue a previous determination at this time. Accordingly, this letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Chris Schulz
Assistant Attorney General
Open Records Division

CS/rl/sdk

Ref: ID# 379239

Enc. Submitted documents

c: Requestor
(w/o enclosures)